

**Testimony of April Kuehnhoff, National Consumer Law Center
Before the U.S. House of Representatives Committee on Financial Services**

regarding

**“Examining Legislation to Protect Consumers and Small Business
Owners from Abusive Debt Collection Practices”**

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I. Introduction and Summary

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee on Financial Services, thank you for inviting me to testify today regarding protecting consumers from abusive debt collection practices. I am a staff attorney at the National Consumer Law Center (NCLC),¹ where my work focuses on consumer debt and fair debt collection. I offer my testimony here on behalf of the low-income clients of NCLC.

Americans are struggling under very high debt burdens. An estimated one in every three adults with a credit report has a debt in collection. For the vast majority of these consumers, it is not an unwillingness to pay their debts but a host of other factors that lead people into the hands of debt collectors, including stagnating wages, job losses, divorce, health problems, predatory lending, and a weakening financial safety net. Americans of all stripes face debt collection, but those with lower incomes, those who live in communities of color, limited English speakers, older Americans, and servicemembers face special challenges.

Unfortunately, despite the passage of the 1977 Fair Debt Collection Practices Act (FDCPA), abusive debt collection practices remain common, although they have – in some cases – taken new forms due to the advent of the debt buyer industry and other factors. Debt collectors are routinely the first or second category of complaints received by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB). Major categories of debt collection problems that consumers face include:

- **Collection without information**, meaning that debt collectors pursue debts without reviewing the documentation needed to ensure they are collecting the right amount from the right person or that they have authority to collect the account.
- **Mass filings of collection lawsuits by collection mills**, which frequently lead to default judgments against consumers regardless of the merits of the case.

¹ The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income and elderly people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damages wrought by debt collection from across the nation. This testimony is presented on behalf of our low-income clients.

- **Collection of time-barred “zombie” debt**, which cannot be collected without mistakes or deception.
- **Harassment, threats, privacy violations, and other abuses** long prohibited by the FDCPA.

The CFPB has the ability to address many of these problems through rulemaking. Unfortunately, the CFPB has proposed a rule that will do more to protect abusive debt collectors than consumers. Among other problems, the proposed rule will:

- permit excessive calls to consumers and potentially third parties and businesses;
- prevent people from receiving information they are entitled to under the law by allowing for electronic delivery of written notices without E-SIGN Act compliance;
- provide new vehicles to harass consumers by email, text, and other means;
- permit violations of consumers’ privacy;
- allow collection of old debts, leading to abuse, deception, and mistakes; and
- protect attorneys who make false, deceptive, or misleading representations in court documents.

Congress, of course, can also address these abusive debt collection practices and can clarify or improve the FDCPA to better protect consumers, as the bills that will be discussed during this hearing seek to do. We support Congressional actions on a variety of debt-related reforms, including: updating the penalties under the FDCPA for inflation to deter abusive conduct; clarifying the FDCPA’s coverage with respect to what is a debt and who is a debt collector; protecting small businesses from abusive confessions of judgment; and conducting strong oversight over the CFPB to ensure that it is living up to its mandate to protect consumers. We are also happy to work with Congress to address these and other debt collection problems.

Below I will provide background on the problem of debt collection in the United States, discuss the major problems posed by debt collectors, review the CFPB’s proposed rule, and briefly comment on some of the proposed legislation to be discussed at this hearing.

II. Americans are Struggling under High Debt Burdens.

A. Current Consumer Debt Levels are at an All-Time High and Continue to Grow.

Consumer debt reached \$13.86 trillion in the second quarter of 2019, which was the 20th consecutive quarter for an increase.² The Federal Reserve Bank of New York reports that “the total is now \$1.2 trillion higher, in nominal terms, than the previous peak of \$12.68 trillion in the third quarter of 2008.”³ The percentage of non-housing balances that were at least 90 days past due was: 10.8% for student loans, 8.3% for credit cards, 7.2% for other non-housing debts, and 4.6% for auto loans.⁴ Moreover, the Federal Reserve Bank of New York reports that “the share of credit card balances transitioning into 90+ day delinquency has been rising since 2017.”⁵

B. Debt Collection Impacts Millions of Americans.

In 2017, seventy-one million Americans – nearly one in three adults in the United States – had a debt in collection reported on their credit reports.⁶ It is estimated that the collection industry contacts Americans more than a billion times a year.⁷

Americans are struggling with debt for several reasons. Wages have stagnated⁸ and wealth and income inequality has grown⁹ while costs for housing, medical care, education and other

² Federal Reserve Bank of N.Y., Household Debt and Credit Report: Q2 2019, *available at* <https://www.newyorkfed.org/microeconomics/hhdc.html>. The non-housing balances of consumer in second quarter of 2019 broke down into: \$1.48 trillion for student loans, \$1.3 trillion for auto loans, \$0.87 trillion for credit cards, and \$0.41 trillion for other, non-housing debts.

³ *Id.*

⁴ *Id.*

⁵ Quarterly Report on Household Debt and Credit, Center for Microeconomic Data (Aug. 2019), *available at* https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/hhdc_2019q2.pdf.

⁶ Hannah Hassani & Signe-Mary McKernan, Urban Inst., *71 million US adults have debt in collections* (July 19, 2018), *available at* www.urban.org/urban-wire/71-million-us-adults-have-debt-collections.

⁷ Robert M. Hunt, Understanding the Model: The Life Cycle of a Debt 10, presented at FTC-CFPB Roundtable “Life of a Debt: Data Integrity in Debt Collection” (June 6, 2013) *available at* www.ftc.gov/sites/default/files/documents/public_events/life-debt-data-integrity-debt-collection/understandingthemodel.pdf. Indeed, Encore Capital Group, one of the many debt buyers operating in the United States, claims that 20% of American consumers either owe money currently or have owed money in the past. Chris Albin-Lackey, Human Rights Watch, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor 11 (Jan. 2016) *available at* www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor#.

expenses continue to escalate. A credit industry that pushes unsustainable debt loads, predatory lending, and the continuing impacts of the financial crisis have taken their toll. Wealth has been stripped from low-income communities, and saving is difficult for families that can barely make ends meet.

C. Low- to Moderate-Income Consumers Face High Levels of Debt Collection.

Low- and moderate-income consumers are disproportionately impacted by debt collection activity.¹⁰ In one national survey, consumers in the lowest income group were three times more likely to have been contacted about a debt in collection than consumers in the highest income group¹¹ and also more likely to have been sued.¹²

⁸ See, e.g., Drew DeSilver, Pew Research Center, *For most U.S. workers, real wages have barely budged in decades* (Aug. 7, 2018) available at <https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/>; Jay Shambaugh et al., The Hamilton Project, *Thirteen Facts about Wage Growth*, at i (Sept. 2017), available at https://www.hamiltonproject.org/assets/files/thirteen_facts_wage_growth.pdf (“After adjusting for inflation, wages are only 10 percent higher in 2017 than they were in 1973, with annual real wage growth just below 0.2 percent.”).

⁹ See, e.g., Estelle Sommeiller & Mark Price, Economic Policy Institute, *The New Gilded Age: Income inequality in the U.S. by state, metropolitan area, and county* (July 19, 2018), available at <https://www.epi.org/publication/the-new-gilded-age-income-inequality-in-the-u-s-by-state-metropolitan-area-and-county/>; Urban Inst., *Nine Charts about Wealth Inequality in America* (Oct. 5, 2017), available at <http://apps.urban.org/features/wealth-inequality-charts/>.

¹⁰ See National Consumer Law Center, *Fair Debt Collection* § 1.3.1.4 (9th ed. 2018), updated at www.nclc.org/library.

¹¹ Consumer Fin. Prot. Bureau, *Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt* 15, 28 (Jan. 2017) (52% of consumers with annual household incomes of less than \$20,000, compared to 16% of respondents with household incomes over \$70,000). See also FINRA Investor Educ. Found., *Financial Capability in the United States 2016*, at 27 (July 2016) (25% of respondents to the 2015 National Financial Capability Study with incomes of less than \$25,000 reported being contacted by a debt collection agency in the past year, compared to 18% of all survey respondents).

¹² Consumer Fin. Prot. Bureau, *Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt* 15, 20, 22, 28 (Jan. 2017), available at https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf (20% of consumers with annual household incomes of less than \$20,000 and 16% of consumers with household incomes between \$20,000 to \$39,999 that had been contacted about a debt in collection were sued, compared to 12% of respondents with household incomes over \$70,000). See also Kate Owen, Legal Aid of Nebraska, *Presentation at the University of Nebraska at Omaha on The High Cost of Being Poor* (Oct. 21, 2016) (reporting that 56.3% of all judgments in Douglas County, Nebraska were against individuals residing in high-poverty zip codes); Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers* (Mar. 2014) (“In Maryland, debt buyers disproportionately sued in jurisdictions with larger concentrations of poor people and racial minorities. For example, Prince

To cover all of their financial needs, low-income consumers try to cover bills by borrowing, rotating payments, paying less than the minimum, paying one bill by taking out a loan, or even ignoring debts that are simply unaffordable.¹³ About 40% of Americans would struggle to pay a \$400 unexpected expense.¹⁴ The result is that any unexpected event such as a medical emergency, job loss, or even a furnace or car that needs repair, can send these families into a financial tailspin. It is these problems, not an unwillingness to pay their debts, that lead most people into the hands of debt collectors.¹⁵

George's County has only 15% of the [sic] Maryland's population, yet 23% of all debt buyer complaints were filed against Prince George's County residents."); Claudia Wilner & Nasoan Sheftel-Gomes, Neighborhood Economic Development Advocacy Project, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Low Income New Yorkers* 10 (May 2010) ("91% of people sued by debt buyers and 95% of people with default judgments entered against them live in low- or moderate-income communities."); Richard M. Hynes, *Broke but Not Bankrupt: Consumer Debt Collection in State Courts*, 60 Fla. L. Rev. 1, 42 (2008) (civil filings in Virginia were positively correlated with poverty).

¹³ See Laura M. Tach & Sara Sternberg Greene, "Robbing Peter to Pay Paul": *Economic and Cultural Explanations for How Lower-Income Families Manage Debt*, 61 Social Problems 1 (Feb. 2014).

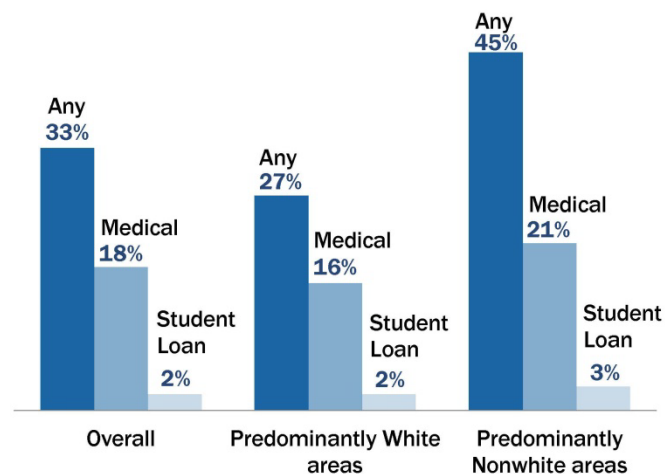
¹⁴ Board of Governors of the Fed. Reserve Sys., Report on the Economic Well-Being of U.S. Households in 2017, at 2 (May 2018), available at <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

¹⁵ See, e.g., David U. Himmelstein et al., *Medical Bankruptcy: Still Common Despite the Affordable Care Act*, Am. J. of Pub. Health, vol. 109, no. 3, at 432 (Mar. 2019) (top three contributors to bankruptcy were income loss, medical-related reasons, and unaffordable mortgage or foreclosure according to survey respondents); Office of Pol'y Dev. & Res., U.S. Dept. of Housing & Urban Dev., Report to Congress on the Root Causes of the Foreclosure Crisis 15 (2010) ("It is generally understood that most borrowers become delinquent due to a change in their financial circumstances that make[s] them no longer able to meet their monthly mortgage obligations. These so called 'trigger events' commonly include job loss or other income curtailment, health problems, or divorce."). See also National Consumer Law Center, Fair Debt Collection § 1.3.1.1 (9th ed. 2018), updated at www.nclc.org/library.

D. Debt Collection Disproportionately Impacts Communities of Color.

An interactive map created by the Urban Institute in 2017 highlighted that in predominantly nonwhite zip codes, the share of individuals with one or more debts in collection reported on their credit reports is higher than in predominantly white zip codes.¹⁶ (See Chart 1.)

CHART 1
Percentage of People in the U.S. with Debt in Collections



Source: Urban Institute, [Debt in America: An Interactive Map](#) (Dec. 6, 2017).

Studies have found racial and ethnic disparities with respect to who is contacted about a debt,¹⁷ the filing of collection lawsuits,¹⁸ the quality of claims filed in those lawsuits,¹⁹ the likelihood

¹⁶ Urban Institute, *Debt in America: An Interactive Map* (Dec. 6, 2017), *available at* https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_collect. For more information, see National Consumer Law Center, *Fair Debt Collection* § 1.3.1.5 (9th ed. 2018), *updated at* www.nclc.org/library.

¹⁷ Consumer Fin. Prot. Bureau, *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt 17-18* (Jan. 2017) *available at* s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf (44% of non-white respondents were contacted about a debt in collection, compared to 29% of white respondents, and 39% of Hispanic respondents were contacted about a debt in collection, compared to 31% of non-Hispanic respondents).

¹⁸ Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 *Loyola L. Rev.* 179, 218 (Mar. 2014) (reporting that “[d]ebt buyers sued disproportionately in jurisdictions with larger concentrations of poor people and racial minorities. For example, Prince George’s County has only 15% of the [sic] Maryland’s population, yet 23% of all debt buyer complaints were filed against Prince George’s County residents.”); Richard M. Hynes, *Broke but Not Bankrupt: Consumer Debt Collection in State*

of obtaining default judgments,²⁰ the risk of judgment,²¹ the likelihood of being subject to garnishment proceedings;²² and who is able to successfully discharge debt in bankruptcy.²³

E. Consumers with Limited-English Proficiency Have Challenges in Dealing with Debt Collectors.

Borrowers facing delinquency and default too often face an English-only system, creating additional barriers to responding to debt collection efforts, overcoming financial distress, and filing complaints regarding debt collection abuses.²⁴ The CFPB's survey of consumer experiences with debt collection showed that only 79% of consumers contacted about a debt in collection were able

Courts, 60 Fla. L. Rev. 1, 3 (2008) (concluding that “civil litigation is disproportionately concentrated in cities and counties with lower median income and homeownership rates; higher incidences of poverty and crime; and higher concentrations of relatively young and minority residents”).

¹⁹ The Legal Aid Society et al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* 1-2 (May 2010) *available at*: mobilizationforjustice.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf (reporting that, in a sample of 451 legal hotline calls, 66% of debt collection cases against black and Latino clients were “clearly meritless,” as compared to 35% of all cases).

²⁰ *See, e.g.*, Mary Spector and Ann Baddour, “*Collection Texas-Style: An Analysis of Consumer Collection Practices in and out of the Courts*,” 67 *Hastings L.J.* 1427, 1458 (June 2016) (finding “a somewhat higher likelihood of default judgments in precincts with a higher non-White population”); Annie Waldman & Paul Kiel, ProPublica, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* 22 (Oct. 8, 2015), *available at* static.propublica.org/projects/race-and-debt/assets/pdf/ProPublica-garnishments-whitepaper.pdf (“Data from St. Louis indicated that suits against residents of majority black census tracts were more likely to result in default judgments or consent judgments and residents of majority black census tracts were less likely to be represented by an attorney when they were sued.”).

²¹ Annie Waldman & Paul Kiel, ProPublica, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* 1 (Oct. 8, 2015), *available at* static.propublica.org/projects/race-and-debt/assets/pdf/ProPublica-garnishments-whitepaper.pdf (analysis of collection actions in St. Louis, Chicago, and Newark found that the risk of judgment was twice as high in majority black census tracts compared to majority white census tracts, holding income constant).

²² *Id.* (reporting that in St. Louis, holding income constant, defendants living in majority black census tracks were 20% more likely to be subject to garnishment proceedings after obtaining a judgment).

²³ Paul Kiel & Hannah Fresques, ProPublica, *Data Analysis: Bankruptcy and Race in America* 11 (Sept. 27, 2017), *available at* static.propublica.org/projects/bankruptcy-methodology/BankruptcyAndRaceInAmerica.pdf (reporting that a study of national bankruptcy data found that “for debtors living in black areas, the odds of having a case dismissed [failing to achieve a bankruptcy discharge] were about twice as high as those of debtors living in white areas, controlling for the court district where the case was filed, income, and other financial characteristics of the debtor”).

²⁴ For more information, see National Consumer Law Center, *Fair Debt Collection* § 1.3.1.8 (9th ed. 2018), *updated at* www.nclc.org/library.

to communicate in their preferred language.²⁵ CFPB²⁶ and FTC²⁷ enforcement actions have highlighted abusive debt collection practices targeting LEP consumers.

F. Older Americans Face Increasing Levels of Debt and Debt Collection.

Among families headed by older Americans, both the percentage that is in debt²⁸ and the amount of their indebtedness have increased in recent years.²⁹ Consumers aged 62 or older file thousands of complaints about debt collection with the CFPB.³⁰ In the CFPB's survey, 59% of those

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- ²⁵ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt 46 n.34 (Jan. 2017), *available at* s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf (the CFPB did not release the data for responses to the question "Is English your preferred language?"). The joint FTC-CFPB Debt Collection and the Latino Community Roundtable in October 2014 identified debt collection challenges in LEP communities, such as reports that LEP debtors tend to be less likely to challenge any representations made by a debt collector. Federal Trade Comm'n & Consumer Fin. Prot. Bureau Roundtable, Debt Collection & the Latino Community (Oct. 9, 2014), *available at* <https://www.ftc.gov/news-events/events-calendar/2014/10/debt-collection-latino-community-roundtable>.
- ²⁶ Consumer Fin. Prot. Bureau, *In re* American Express Centurion Bank and American Express Bank, FSB Civ. Action No. 2017-CFPB-0016, Consent Order (Aug. 23, 2017) (respondents did not make the same collection offers available to customers with Spanish language preferences that they did to consumers who did not express a Spanish language preference).
- ²⁷ *FTC v. Centro Natural Corp.*, No. 14-23879-CIV (S.D. Fl. Oct. 20, 2014) (\$1.5 million judgment against an abusive debt collection operation that targeted Spanish and English speakers, along with a complete ban on debt collection activity and other injunctive relief); *FTC v. RTB Enterprises, Inc.*, No. 4:14-cv-01691 (S.D. Tex. June 19, 2014) (monetary judgment of \$4 million against abusive Texas-based debt collector that targeted Spanish and English speakers); *FTC v. Rincon Mgmt. Servs., L.L.C.*, No. 5:11-cv-01623-VAP-SP (C.D. Cal. Mar. 26, 2014) (monetary judgment of over \$23 million against an abusive debt collection operation that targeted Spanish and English speakers, along with a complete ban on debt collection activity and other injunctive relief).
- ²⁸ Federal Reserve Bd., 2016 Survey of Consumer Finances Chartbook 837 (Sept. 20, 2017), *available at* <https://www.federalreserve.gov/econres/files/BulletinCharts.pdf> (49.8% of families headed by someone aged 75 or older were in debt in 2016 compared to 21% in 1989. 70.1% of families headed by someone 65–74 were in debt in 2016 compared to 49.6% in 1989). For more information, see National Consumer Law Center, Fair Debt Collection § 1.3.1.6 (9th ed. 2018), *updated at* www.nclc.org/library.
- ²⁹ Meta Brown, Federal Reserve Bank of N.Y., The Graying of American Debt 10 (Feb. 12, 2016), *available at* www.newyorkfed.org/medialibrary/media/newsevents/mediaadvisory/2016/Graying-of-American-Debt-02122016.pdf (reporting that, from 2003 to 2015, the amount of real per capita debt at age sixty-five increased over eight-fold (886%) for student loans, 47% for debt secured by a home, and 29% for auto loans, while staying the same for credit card debt).
- ³⁰ Consumer Fin. Prot. Bureau, Monthly Complaint Report, vol. 23, at 6 (May 2017), *available at* s3.amazonaws.com/files.consumerfinance.gov/f/documents/201705_cfpb_Monthly_Complaint_Report.pdf (showing 26,452 total complaints about mortgages and 25,561 total complaints about debt collection filed by those aged 62 or older).

aged 62 or older who were contacted about a debt cited an issue with a debt in collection, 40% disputed a debt, and 20% had been sued on a debt.³¹ For older adults seeking assistance from legal hotlines, collection-related matters were the second most common type of case in 2017.³²

G. Debt Collection Has a High Impact on Servicemembers and Veterans.

Consumer debt has a negative impact on the careers of military servicemembers, and some collectors attempt to use this information to coerce payments from servicemembers.³³ Abusive collection tactics include:

- contacting the servicemember's chain of command;
- threatening punishment under the military's justice system;
- threatening reductions in rank; and
- threatening revocation of security clearance.³⁴

Approximately two out of every five complaints filed by servicemembers with the CFPB were about debt collection, and servicemembers were more likely to complain about debt collection than all consumers filing complaints at the CFPB.³⁵ Debt collection was the fifth most common type of complaint reported by military consumers in the 2017 CSN Data Book.³⁶

³¹ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt 25 (Jan. 2017), *available at* s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

³² Center for Elder Rights Advocacy, Senior Legal Helplines Annual Report 2017, at 8 (Oct. 2018), *available at* legalhotlines.org/resource/2017-senior-legal-helplines-annual-report/.

³³ Holly Petraeus, Consumer Fin. Prot. Bureau, *Are unpaid debts a military career-killer?* (Jan. 9, 2015), *available at* www.consumerfinance.gov/about-us/blog/are-unpaid-debts-a-military-career-killer/. For more information, see National Consumer Law Center, Fair Debt Collection § 1.3.1.7 (9th ed. 2018), *updated at* www.nclc.org/library.

³⁴ Consumer Fin. Prot. Bureau, Written Testimony of Holly Petraeus before the Senate Committee on Banking, Housing and Urban Affairs (Jun. 26, 2012), *available at* www.consumerfinance.gov/about-us/newsroom/written-testimony-of-holly-petraeus-before-the-senate-committee-on-banking-housing-and-urban-affairs/.

³⁵ Consumer Fin. Prot. Bureau, 50 State Snapshot of Servicemember Complaints: A Nationside Look at Complaints 2 (Oct. 2017), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_monthly-complaint-report_50-state-snapshot-servicemembers_102017.pdf (39% of complaints by servicemembers, veterans, and their families are about debt collection, compared to 26% of complaints from non-servicemembers).

³⁶ Federal Trade Comm'n, Consumer Sentinel Network: Data Book 2017, at 18 (Mar. 2018), *available at* www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-

H. Medical Debt Impacts Millions of Americans.

Medical debt is an enormous problem for both low-income and middle-class American consumers. Medical debt is especially onerous because it is often sudden and unavoidable, and consumers with medical debts may be especially vulnerable due to illness or infirmity.³⁷

While the number of uninsured adult Americans has been dropping, still twenty-three million or 12% of adult Americans lacked health insurance in a 2016 survey, and another eighteen million or 10% of adult Americans were uninsured at some point in 2016.³⁸ Moreover, uninsured consumers are often charged several times more for the same medical services as private insurers or Medicaid.³⁹

Having health insurance is no guarantee against medical debt. Insured consumers are regularly faced with unmanageable debt,⁴⁰ often because of large deductibles, co-insurance, and out-of-network charges. Even when consumers believe they are receiving in-network services, there is a risk of large out-of-network charges, as one of the participants in a medical service may be out of the network while other hospital and physician services are within the network. For example, one study found that 22% of visits to in-network emergency departments involved out-of-network physicians.⁴¹

The Centers for Disease Control found that 43.8% of Americans under the age of sixty-five in 2016 had trouble paying medical bills in the previous twelve months.⁴² According to the CFPB, in

[2017/consumer_sentinel_data_book_2017.pdf](#).

³⁷ See Mark A. Hall & Carl E. Schneider, *Patients As Consumers: Courts, Contracts, and the New Medical Marketplace*, 106 Mich. L. Rev. 642 (Feb. 2008) (discussing special vulnerability of patients as consumers due to illness and reliance upon advice of doctors).

³⁸ Sarah R. Collins et al., The Commonwealth Fund, *How the Affordable Care Act Has Improved Americans' Ability to Buy Health Insurance on Their Own* (Feb. 2017), available at www.commonwealthfund.org.

³⁹ See National Consumer Law Center, *Collection Actions* § 9.1.3 (4th ed. 2017) (discussing chargemaster pricing).

⁴⁰ See, e.g., Christopher Garmon & Benjamin Chartock, *One in Five Inpatient Emergency Department Cases May Lead to Surprise Bills*, 36 Health Affairs 177–181 (Jan. 2017). See also Chad Terhune, *The \$109K Heart Attack Bill is Down to \$332. What About Other Surprise Bills?*, Kaiser Health News (Aug. 31, 2018), available at <https://khn.org> (noting the limited reach of state laws intended to restrict surprise bills).

⁴¹ Zack Cooper & Fiona Scott Morton, *Out of Network Emergency-Physician Bills—an Unwelcome Surprise*, New Eng. J. of Med. (Nov. 17, 2016).

⁴² Robin A. Cohen & Emily P. Zammitti, National Ctr. for Health Statistics, *Problems Paying Medical Bills Among Persons Under Age 65: Early Release of Estimates From the National Health Interview Survey, 2011-June 2017* (Nov. 2016), available at www.cdc.gov.

the second quarter of 2018, 58% of accounts reported by third-party debt collectors were for medical debts,⁴³ and the Urban Institute reported that, in 2016, 18% of consumers with a credit report had a medical debt in collection.⁴⁴ In a survey of randomly sampled bankruptcy filers from 2013-2016, published in the American Journal of Public Health, 58.5% of respondents very much agreed or somewhat agreed that medical expenses were a contributor to their bankruptcy.⁴⁵ In its survey of consumer experiences with debt collection, the CFPB found that 59% of consumers who were contacted about a debt in collection were contacted about a medical bill.⁴⁶

I. Student Loan Debt is Reaching Crisis Levels.

Currently, nearly forty-five million people in the United States owe more than \$1.5 trillion on their student loans. Roughly one quarter of federal loan borrowers are delinquent or in default.⁴⁷

There are extraordinary penalties for borrowers who go into default on a federal loan. When a borrower has a defaulted federal student loan (a loan that is more than 270 days past due), the government can seize certain income and assets from the borrower without a court order. Low-income borrowers are especially harmed because the government often seizes benefits, such as the Earned Income Tax Credit (“EITC”), that are aimed at promoting economic security and mobility.

⁴³ Consumer Fin. Prot. Bureau, Market Snapshot: Third-Party Debt Collections Tradeline Reporting 13 (July 2019), *available at* https://files.consumerfinance.gov/f/documents/201907_cfpb_third-party-debt-collections_report.pdf.

⁴⁴ Urban Inst., Debt in America: An Interactive Map (Dec. 6, 2017), *available at* https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_collect.

⁴⁵ David U. Himmelstein et al., *Medical Bankruptcy: Still Common Despite the Affordable Care Act*, Am. J. of Pub. Health, vol. 109, no. 3, at 432 (Mar. 2019).

⁴⁶ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt 21 (Jan. 2017), *available at* s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

⁴⁷ *See* U.S. Dep’t of Educ., Federal Student Aid Data Center, Federal Student Loan Portfolio. *See also*, Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform (Sept. 2015).

In addition to these powerful collection tools, both the government and guaranty agencies rely heavily on private collection agencies and other, more “traditional” collection efforts in dealing with borrowers who have defaulted. According to a Department of Treasury report in 2009, the Department of Education refers every eligible defaulted debt to one of its private collection agencies.⁴⁸ Unfortunately, oversight of collection agencies has been insufficient to protect student loan borrowers. For example, in its testimony to Congress, the GAO stated that the Department’s oversight provides “little assurance that borrowers are provided accurate information.”⁴⁹ The GAO documented a range of errors for each of the six collection agencies visited, including providing borrowers with inaccurate or misleading information about rehabilitation program requirements and other repayment options for emerging out of default.

In early 2015, the Department canceled the contracts of five of its private collection agencies after finding that “agents of the companies made materially inaccurate representations to borrowers about the loan rehabilitation program.”⁵⁰ However, some of these companies had been top performers under the existing review process, indicating that the process failed to adequately detect or protect against conduct that harms defaulted borrowers.⁵¹

Private student loan creditors do not have the same range of powerful collection tools as the government.⁵² Generally, they hire third-party debt collectors to pressure borrowers to pay. It is particularly common for collectors of private student loans to claim that they can use collection tools unique to federal loans, such as Social Security offsets. If unsuccessful with private debt collectors, or if they choose not to use collectors, the creditors can sue and attempt to obtain

⁴⁸ U.S. Dep’t of the Treasury, U.S. Government Receivables and Debt Collection Activities of Federal Agencies: Fiscal Year 2009 Report to the Congress 15 (Mar. 2010), *available at* www.fiscal.treasury.gov.

⁴⁹ Federal Student Loans: Oversight of Defaulted Loan Rehabilitation Needs Strengthening: Testimony Before the H. Subcomm. on Higher Educ. and Workforce Training, Comm. on Educ. and the Workforce, 113th Cong. 8 (2014), *available at* www.gao.gov (statement of Melissa Emrey-Arras, Dir., Educ., Workforce, and Income Sec., U.S. Gov’t Accountability Office).

⁵⁰ Press Release, U.S. Dep’t of Educ., U.S. Department of Education to End Contracts with Several Private Collection Agencies (Feb. 27, 2015), *available at* www.ed.gov. The five agencies with canceled contracts were: Coast Professional, Enterprise Recovery Systems, National Recoveries, Pioneer Credit Recovery, and West Asset Management.

⁵¹ See National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs of the Government’s Partnership with Debt Collection Agencies Appx. A (Sept. 2014), *available at* www.nclc.org.

⁵² National Consumer Law Center, Student Loan Law § 12.6.3 (5th ed. 2015), *updated at* www.nclc.org/library.

judgments. The main difference between private student loans and other unsecured debts is the heightened bankruptcy dischargeability standards for private loans.⁵³

III. Abusive Debt Collectors Have Been a Persistent Source of Problems for Consumers.

A. Congress Has Long Recognized the Problems with Debt Collectors.

The Fair Debt Collection Practices Act (FDCPA) was enacted by Congress in 1977—with bipartisan support—⁵⁴ “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection practices.”⁵⁵ Congress found that abundant evidence existed of the use of “abusive, deceptive, and unfair debt collection practices by many debt collectors.”⁵⁶ Congress further recognized that regulating debt collection was critically important because “[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.”⁵⁷

While Congress granted the FTC the authority in 1977 to enforce the FDCPA and to address unfair and deceptive practices, it had no authority to examine debt collectors or to write rules governing debt collection. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the CFPB. The CFPB now not only shares enforcement power over the FDCPA with the FTC, but it also has supervision and rulemaking authority over debt collectors.⁵⁸

⁵³ *See id.*

⁵⁴ 15 U.S.C. §§ 1692–1692p.

⁵⁵ 15 U.S.C. § 1692(e).

⁵⁶ 15 U.S.C. § 1692(a).

⁵⁷ 15 U.S.C. § 1692(a).

⁵⁸ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010); 15 U.S.C. § 1692l(d).

B. Federal, State, and Private Enforcement Actions Illustrate the Continuing Problems with Debt Collectors.

Both the FTC and the CFPB have enforcement authority to investigate and penalize bad actors and conduct. In the CFPB and FTC's most recent report to Congress,⁵⁹ the FTC reported that, in 2018, it had obtained more than \$58.9 million in judgments, and secured bans against 32 companies from working in the debt collection industry.⁶⁰ In the same report, the CFPB indicated it was engaged in six public enforcement actions arising from alleged FDCPA violations.⁶¹

State attorneys general also have brought numerous enforcement actions against debt collectors over the years.⁶²

Congress intended the FDCPA to be “primarily self-enforcing” by private attorneys general.⁶³ Therefore, in addition to enforcement actions against debt buyers by the CFPB and FTC, consumers have brought numerous cases alleging various debt collection abuses since the FDCPA was enacted.

Government and private enforcement actions show only the tip of the iceberg of debt collection problems.⁶⁴ The vast majority of debt collection abuses go unaddressed, as consumers do not know their rights, do not know whom they can complain to, or lack access to counsel.

⁵⁹ Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act (Mar. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf.

⁶⁰ *Id.* at 3.

⁶¹ *Id.* at 23.

⁶² *See, e.g.*, Letter from Donald S. Clark, Secretary, Federal Trade Comm'n, to Mick Mulvaney, Acting Director, Consumer Fin. Prot. Bureau, at 3 n.11 (Feb. 8, 2018), *available at* https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-enforcement-fair-debt-collection-act-calendar-2017-report-consumer/p064803_ftc_report_to_cfpb_re_fdcpa_calendar_2017_02082018_2.pdf (discussing Operation Collection Protection, in which the FTC cooperated with state and local law enforcement and regulatory agencies to target illegal debt collection).

⁶³ S. Rep. No. 382, 95th Cong., 1st Sess., at 5 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696. *See also* 15 U.S.C. § 1692k (providing for a private right of action, statutory penalties, and attorney's fees).

⁶⁴ *See* Section III(C) of this testimony for more about the volume of debt collection complaints by consumers, which vastly outnumber the number the amount of enforcement actions that are brought in a given year.

C. Consumers Routinely Complain about Abusive Debt Collection Practices.

Despite the enactment of the FDCPA, abusive debt collection practices have remained a problem. Debt collection has been consistently near the top – and usually at the top – of complaints at the FTC⁶⁵ and now at the CFPB.⁶⁶

D. The Emergence of Debt Buyers Has Contributed to Debt Collection Abuses.

Debt buyers are companies that purchase debts from original creditors, intermediaries, or other debt buyers. Debt buyers either try to collect the debts themselves, place debts with collection agencies for collection, or sell the debts to other debt buyers. The face value of defaulted consumer debt purchased by debt buyers increased from \$6 billion in 1993 to \$98 billion in 2013.⁶⁷ Some debt buyers purchase vast amounts of debt. For example, in 2017, Encore Capital Group, Inc. purchased portfolios of debt with a face value of \$10.1 billion and PRA purchased portfolios of debt with a face value of \$7.5 billion.⁶⁸

Debt buyers purchase debt for pennies on the dollar.⁶⁹ However, despite paying just a small fraction of the amount owed to purchase consumer debts that were written off by the original lender, debt buyers aggressively seek to collect the full amount of the debt – and may also seek to collect interest, costs, and attorney’s fees in many cases.

⁶⁵ See Federal Trade Comm’n, Consumer Sentinel Network: Data Book 2018, at 7 (Feb. 2019), *available at* https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf (reporting that, with more than 475,000 complaints generated in 2018, debt collection was the second leading source of complaints collected by the FTC).

⁶⁶ Consumer Fin. Prot. Bureau, Consumer Response Annual Report: January 1–December 31, 2018, at 1 (Mar. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf (reporting that the CFPB received approximately 81,500 complaints about debt collection in 2018, making it one of the most common topics of consumer complaints regarding financial products and services that year).

⁶⁷ The Nilson Report, Issue 792 (July 2003) and Issue 1041 (May 2014). See also National Consumer Law Center, Fair Debt Collection § 1.3.4.2 (9th ed. 2018), *updated at* www.nclc.org/library (collecting data from 1993 to 2013 about consumer debt sales).

⁶⁸ Encore Capital Group, Inc., Form 10-K (Dec. 31, 2018), *available at* <https://www.sec.gov/Archives/edgar/data/1084961/000108496119000020/ecpg-20181231x10k.htm>; PRA Group, Inc., Form 10-K (Dec. 31, 2017), *available at* <https://www.sec.gov/Archives/edgar/data/1185348/000118534818000008/praa-20171231x10k.htm>.

⁶⁹ National Consumer Law Center, Fair Debt Collection § 1.3.4.3 (9th ed. 2018), *updated at* www.nclc.org/library (collecting data about the price that debt buyers pay to purchase debts).

Debt buyers may obtain very little information about the consumer debts that they buy. The FTC reviewed the types of information transferred in 3,400 debt portfolios sales between 2006 and 2009, finding that important pieces of information were not transferred with the data file.⁷⁰ While credit card issuers now report transferring key documents when they sell debts,⁷¹ the information appears to be self-reported rather than verified by the CFPB. Moreover, other types of debts are still sold or resold, and old credit card debts are still resold without accompanying documentation.⁷²

Each time a debt changes hands, there is an increased likelihood for records to be lost or erroneously changed, undermining the reliability of the collection process for those debts. A CFPB report about online debt sales found that 78% of portfolios available to be sold had been placed with two or more debt collectors or debt buyers.⁷³ Moreover, sellers may not guarantee the accuracy of the data that they transfer.⁷⁴

When problems like inability to verify a debt after a dispute arise, debt buyers may sell the problematic accounts to other debt buyers, transferring a disputed debt without noting the dispute or whether it is resolved in the information transferred to a subsequent debt buyer.⁷⁵

Debt buyers also buy, sell, and collect on time-barred debts. Collecting on debts that are so old that the statute of limitations has passed exposes consumers to harmful errors, as older debts often lack documentation to prove the amount of the debt is correct and that the consumer actually owes it. Moreover, consumers may lack the records to show that they have paid the debts, especially for older debts. A study by the FTC found that nearly 25% of debt acquired from the original

⁷⁰ Federal Trade Comm’n, The Structure and Practices of the Debt Buying Industry, at T-9 to T-10 (Jan. 2013), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>. *See also* National Consumer Law Center, Fair Debt Collection § 1.4.7.3 (9th ed. 2018), *updated at* www.nclc.org/library.

⁷¹ Consumer Fin. Prot. Bureau, The Consumer Credit Card Market 164-165 (Aug. 2019), *available at* https://www.consumerfinance.gov/documents/7926/cfpb_consumer-credit-card-market-report_2019.pdf (“[a]ll survey respondents that sold debt reported that they provide buyers with key documents and account information at the time of sale”).

⁷² *See* Consumer Fin. Prot. Bureau, Market Snapshot: Online Debt Sales 6 (Jan. 2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Online-Debt-Sales-Report.pdf (only some of the online portfolios were listed as including account documentation or “media”).

⁷³ *Id.* at 8.

⁷⁴ *See* Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 Harv. J. on Legis. 41 (2015); Federal Trade Comm’n, The Structure and Practices of the Debt Buying Industry (Jan. 2013).

⁷⁵ Federal Trade Comm’n, The Structure and Practices of the Debt Buying Industry 37 (Jan. 2013), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

creditor, and more than 60% of debt purchased from other debt buyers was over three years old at the time of purchase.⁷⁶ A CFPB report about online debt sales found that the median age of the debt listed for sale was five years after charge-off.⁷⁷ Regardless of the age at the time of purchase, debts continue to age throughout the course of the collection process. Filings with the Security and Exchange Commission demonstrate that some debt buyers are collecting on debts for a decade or more.⁷⁸

Debt buying touches many aspects of modern life. A wide variety of consumer debts are sold, including: credit cards, medical, telecomm, automobile, home equity, mortgage, utility, payday loans, and student loans.⁷⁹

IV. Major Problems Persist in the Debt Collection Market.

A. Debt Collectors Pursue Debts, and Obtain Default Judgments, Without Information to Ensure that they Have the Right Person and the Right Amount.

The single most significant problem in debt collection is the dangerously incomplete or inaccurate information that collectors routinely use as the basis for their collection activities. Relying on inadequate or inaccurate information for collection efforts leads to the regular pursuit of the wrong people or the wrong amounts by collectors who cannot prove they are entitled to collect the alleged debt. This problem has been documented repeatedly by the CFPB in its own survey,⁸⁰ and

⁷⁶ *Id.* at T-7.

⁷⁷ Consumer Fin. Prot. Bureau, Market Snapshot: Online Debt Sales 11 (Jan. 2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Online-Debt-Sales-Report.pdf.

⁷⁸ PRA Group, Inc., Annual Report, Form 10-K for 2016, at 35 (showing nearly \$12 million collected in 2016 for accounts purchased between 1996 and 2006); Encore Capital Group, Inc. Annual Report, Form 10-K for 2013, at 66 (company received payments on collection accounts purchased prior to 1999). See also Encore Capital Group, Inc. Annual Report, Form 10-K for 2016, at 43 (showing more than \$2 million collected in 2016 for accounts purchased in 2007).

⁷⁹ National Consumer Law Center, Fair Debt Collection § 1.3.4.2 (9th ed. 2018), *updated at* www.nclc.org/library.

⁸⁰ Consumer Fin. Prot. Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered, Appendix B (July 28, 2016), *available at* https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (showing 28% of survey participants were contacted about debts they did not owe and 33% were contacted for the wrong amount).

its reports about consumer debt collection complaints,⁸¹ as well as reports by the Federal Trade Commission⁸² and others.⁸³

Recognizing these serious problems, the Office of the Comptroller of the Currency (“OCC”) has brought enforcement actions against banks that sold debts without adequate documentation,⁸⁴ and has issued guidance for banks selling their debt to debt buyers regarding what documentation should be provided at sale.⁸⁵

In prior enforcement actions charging debt collectors with unfair, deceptive, and abusive practices, the CFPB has identified the purchase of debt with inadequate or incomplete information as a core problem. In multiple settlements⁸⁶ the CFPB has identified the collection of debts without a “reasonable basis” as a violation of the FDCPA’s prohibition on the use of false, deceptive, or misleading representations⁸⁷ and the use of any false representation or deceptive means to collect a

⁸¹ See, e.g., Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act: CFPB Annual Report 2019, at 16 (Mar. 2019) (“the most common debt collection complaint is about attempts to collect a debt that the consumer reports is not owed [40%]”).

⁸² Federal Trade Comm’n, Collecting Consumer Debts: The Challenge of Change: A Federal Trade Commission Workshop Report (Feb. 2009); Federal Trade Comm’n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration (July 2010); Federal Trade Comm’n, The Structure and Practices of the Debt Buying Industry (Jan. 2013).

⁸³ See, e.g., Chris Albin-Lackey, Human Rights Watch, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor (Jan. 2016); Rick Jurgens & Robert J. Hobbs, The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts (July 2010). See also National Association of Consumer Advocates, An Online Survey Snapshot: Consumer Attorneys Report on How Debt Collectors Treat Their Clients 6 (Sept. 2019), available at https://www.consumeradvocates.org/sites/default/files/naca_report_survey_debtcollectionpractices092019.pdf (“89% of attorneys represented consumers in the past two years who were contacted by a collector after the consumer told the collector that s/he did not owe the debt. The 132 attorneys responding to this survey question represented at least 748 consumers in the past two years (not including consumers in related class actions) who experienced this issue.”);

⁸⁴ See, Statement of Thomas J. Curry, Comptroller of the Currency, On Civil Penalties Assessed Against JPMorgan Chase Bank (July 8, 2015), available at: <https://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-98b.pdf> (“Our action in 2013 was aimed at ensuring that affidavits and other sworn documents are accurate, based on the knowledge of the person signing the document, and properly notarized.”).

⁸⁵ Office of the Comptroller of the Currency, Consumer Debt Sales: Risk Management Guidance, Bulletin 2014-37 (Aug. 4, 2014), available at <http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html>.

⁸⁶ *In re* Portfolio Recovery Assocs., File No. 2015 CFPB 0023, Consent Order (Sept. 9, 2015); *In re* Encore Capital Group, 2015-CFPB-0022, Consent Order (Sept. 9, 2015).

⁸⁷ 15 U.S.C. § 1692e (“A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”).

debt.⁸⁸ Collecting debts without a reasonable basis would also violate the FDCPA’s prohibition against collecting any amount unless authorized by the contract or applicable law.⁸⁹

The CFPB’s outline of potential debt collection proposals for the Small Business Review Panel⁹⁰ recognized the importance of problems with collecting the wrong amount from the wrong consumer by collectors who may not be entitled to collect the debt. The outline identified “substantial deficiencies in the quality and quantity of information collectors receive at placement or sale of the debt”⁹¹ as key causes of these problems.

Additionally, in recent years, a number of states have passed statutes, adopted regulations, or amended court rules to tackle these systemic information failures by placing additional requirements either on debt buyers specifically or all debt collectors.⁹² Some states have considered reforms but have not yet enacted them,⁹³ and reform efforts are anticipated in other states.

B. Mass Filings of Collection Lawsuits by Collection Mills

In a national survey conducted by the CFPB, 15% of all consumers who were contacted about a debt in collection were sued.⁹⁴ Combined with the estimate that seventy million Americans

⁸⁸ 15 U.S.C. § 1692e(10) (“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer” violates the FDCPA.).

⁸⁹ 15 U.S.C. § 1692f(1) (“The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law” violates the FDCPA.)

⁹⁰ Consumer Fin. Prot. Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered (July 28, 2016).

⁹¹ *Id.* at 6.

⁹² *See, e.g.*, Cal. Civ. Code § 1788.50-1788.64; Md. R. Civ. P. 3-306; Mass. Uniform Small Claim Rules (2009 amendments); Minn. Stat. §§ 491A.01, 541.053, 548.101, 550.011, 588.04; N.Y. DFS Rules, 23 NYCRR § 1; N.Y. Court Rules 22 NYCRR §§ 202.27-a, 202.27-b, 208.14, 208.6(h), 210.14-a, 210.14-b, 212.14-a and 212.14-b.; N.C. Gen. Stat. §§ 58-70-115, 58-70-150, 58-70-155.

⁹³ *See, e.g.*, Or. HB 2252 (2015); Or. H.B. 2826 (2013); Okla. S.B. 1430 (2012); Fla. S.B. 1116 (2011); Ga. S.B. 448 (2011).

⁹⁴ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB Survey of Consumer Views on Debt 27 (Jan. 2017) *available at* s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

were contacted about a debt in the one-year period covered by that survey,⁹⁵ 15% translates into an estimate of more than ten million Americans being sued in debt collection lawsuits each year.⁹⁶

Some debt collection law firms specialize in filing a high volume of consumer collection suits with minimal if any review of the allegations or evidence for the lawsuits they are filing.⁹⁷ The robo-signing deficiencies that came to light during the 2009 foreclosure crisis also infiltrated the debt collection industry. In one case, the court found that an affidavit signed by a “specialist” who signed 200 to 400 affidavits per day, falsely claiming to have personal knowledge of its contents, was misleading and violated the FDCPA.⁹⁸

Most of these lawsuits result in default judgments, without consideration of the merits of the case.⁹⁹ The FTC reported that, at a forum in 2010, “panelists from throughout the country estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to ninety percent.”¹⁰⁰ One reason for default judgments is because consumers do not receive actual notice of the lawsuits, which can be caused by problems with service of process, another prevalent problem in debt collection cases.¹⁰¹

⁹⁵ Consumer Fin. Prot. Bureau, CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened (Jan. 12, 2017), *available at* <https://www.consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/>.

⁹⁶ *See also* National Consumer Law Center, Fair Debt Collection § 1.4.9.1 (9th ed. 2018), *updated at* www.nclc.org/library (collecting data about the number of debt collection lawsuits).

⁹⁷ *See, e.g.*, Bock v Pressler & Pressler, L.L.P., 30 F. Supp. 3d 283, 290 (D.N.J. 2014) (one collection attorney “reviewed 673 complaints” in one day, approving 663 that were then filed; some days that one attorney reviewed for court filing as many as 1,000 collection lawsuits); Commonwealth v. Lustig, Glaser & Wilson, P.C., Complaint ¶¶ 22–23 (Mass. Super. Ct. Dec. 21, 2015) (stating that the debt collection law firm filed more than 100,000 collection lawsuits from 2011 through 2015). *See also* The Legal Aid Society et al., Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower Income New Yorkers 1–2 (May 2010) (finding that five law firms filed roughly two-thirds of the 457,322 debt buyer lawsuits filed between January 2006 and July 2008).

⁹⁸ *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961, 966–69 (N.D. Ohio 2009).

⁹⁹ *See also* National Consumer Law Center, Fair Debt Collection § 1.4.9.3 (9th ed. 2018), *updated at* www.nclc.org/library (collecting research about default judgments).

¹⁰⁰ Federal Trade Comm’n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration 7 (July 2010), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf> (also collecting studies).

¹⁰¹ *See* Office of the N.Y. Att’y Gen., Press Release, Attorney General Cuomo Sues to Throw Out Over 100,000 Faulty Judgments Entered Against New York Consumers in Next Stage of Debt Collection

Even when consumers appear, they are almost overwhelmingly unrepresented in debt collection lawsuits, leading to a significant power and knowledge imbalance. Studies show that between ninety-one and ninety-nine percent of consumers are unrepresented by an attorney when they are sued on a debt.¹⁰² Collection attorneys typically try to convince these unrepresented consumers to settle rather than appearing before the judge or magistrate. Court officials often direct consumers to speak to these attorneys.¹⁰³

When consumers do attempt to dispute a debt in court, collection attorneys who do not have the evidence to prove their debt often ask for a continuance – in the hopes that the consumer will not appear the next time -- or dismiss the lawsuit (without prejudice to their ability to refile) in the hopes that they can obtain a default judgment.¹⁰⁴

C. Collection of Time-Barred “Zombie” Debt is Unfair, Deceptive and Abusive

Courts have found that the FDCPA prohibits debt collectors, including debt buyers, from suing or threatening to sue on debt that is time-barred.¹⁰⁵ Yet some debt collectors continue to sue

Investigation (July 22, 2009), *available at* <https://ag.ny.gov/press-release/attorney-general-cuomo-sues-throw-out-over-100000-faulty-judgments-entered-against-new> (alleging that a process serving company failed to properly serve consumers across New York State, resulting in approximately 100,000 default judgments).

¹⁰² See also National Consumer Law Center, Fair Debt Collection § 1.4.9.4 (9th ed. 2018), *updated at* www.nclc.org/library (collecting data about the percent of consumers that are represented in collection lawsuits).

¹⁰³ See, e.g., Chris Albin-Lackey, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor 54–57 (Human Rights Watch, Jan. 2016).

¹⁰⁴ See, *Demarais v. Gurstel Chargo, P.A.*, 869 F.3d 685, 695-696 (8th Cir. 2017) (Interpreting the FDCPA to prohibit debt collectors from falsely threatening to proceed to trial—coercing consumers and their attorneys to prepare for and appear at a trial that the debt collector did not intend to pursue.).

¹⁰⁵ See, e.g., *Buchanan v. Northland Group, Inc.*, 776 F.3d 393 (6th Cir. 2015) (finding that a misrepresentation about the limitations period is a —straightforward violation of § 1692e(2)(A)); *Phillips v. Asset Acceptance, L.L.C.*, 736 F.3d 1076 (7th Cir. 2013) (reversing lower court’s denial of certification of an FDCPA class action against a debt buyer that was bringing suits against consumers on old natural gas bills); *Jackson v. Midland Funding, L.L.C.*, 468 Fed. Appx. 123 (3d Cir. 2012) (affirming judgment against debt buyer arising from its filing of a time-barred collection suit); *Spencer v. Hendersen-Webb*, 81 F. Supp. 2d 582, 590, 595 (D. Md. 1999) (holding that misrepresentation of statute of limitations was violation of FDCPA). See also Federal Trade Comm’n, *Collecting Consumer Debts: The Challenges of Change – A Workshop Report*.62-66 (Feb. 2009), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf>.

or threaten to sue on time-barred debt.¹⁰⁶ The Bureau found, in its 2018 FDCPA Annual Report, that 11% of complaints received were for collectors taking or threatening to take legal or other negative action, with 26% of those complaints involving a threat to sue on an old debt.¹⁰⁷ Consumers faced with a lawsuit are likely to believe that the allegations in the complaint are accurate and that there is a valid claim against them for the debt.¹⁰⁸ As such, they often end up paying on debts they otherwise would not pay, with money that would have gone toward food, rent, and other necessities. Or, believing that they have no defenses, they may fail to appear in the action, resulting in a default judgment against them.¹⁰⁹

Whether in or out of court, collecting on these “zombie debts” exposes consumers to harmful errors, as older debts often lack documentation to prove that the amount of the debt is correct and that the consumer actually owes it. Consumers themselves also typically lack documentation for these older debts. The collection of time-barred debt is particularly harmful to the least sophisticated consumers, who do not understand that the statute of limitations has run, that paying on the debt can restart the clock on the debt (in many states), or that they have a defense to a legal action.

D. Debt Collectors Engage in Harassment and Threats

Despite the 1977 passage of the FDCPA, the basic debt collection problems of harassment, threats and abuse prohibited by the Act remain common.

In the CFPB survey of consumer experiences with debt collection, 53% of consumers contacted about a debt were contacted about one that they did not owe, was for the incorrect

¹⁰⁶ See National Association of Consumer Advocates, “An Online Survey Snapshot: Consumer Attorneys Report on How Debt Collectors Treat Their Clients” (Sept. 2019) https://www.consumeradvocates.org/sites/default/files/naca_report_survey_debtcollectionpractices092019.pdf (71% of consumer attorneys have recently represented consumers in cases where a debt collector threatened to sue the consumer to collect on time-barred debt, assisting at least 455 individual consumers in the two-year period; and 64% of attorneys have recently worked on cases representing consumers where a debt collector sued a consumer to collect on time-barred debt).

¹⁰⁷ Consumer Fin. Prot. Bureau, Annual Report 2018: Fair Debt Collection Practices Act 15-16,, tbl. 1 (Mar. 2018), available at https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2018.pdf.

¹⁰⁸ See *Consumer Fin. Prot. Bureau v. Hanna & Assocs.*, 114 F. Supp. 3d 1342, 1366 (N.D. Ga. July 14, 2015).

¹⁰⁹ See *Id.* at 1366-67.

amount, or was owed by a family member.¹¹⁰ Sixty-three percent of respondents who had been contact about a debt said they were contacted too often; 17% reported being contacted eight or more times a week.¹¹¹ Only one out of four consumers who requested that collectors stop contacting them said that the collectors did in fact stop in response to their requests.¹¹² More than one in four people contacted by a debt collector had been threatened.¹¹³

Similarly, the most common types of debt collection complaints in 2017 compiled by the FTC were “Calls After Getting ‘Stop Calling’ Notice” (227,917 complaints), “Calls Repeatedly” (210,238 complaints), “Makes False Representation about Debt” (192,704 complaints), “Fails to Identify as Debt Collector” (84,364), as well as “Falsely Threatens Illegal or Unintended Act” (31,519 complaints).¹¹⁴ Despite the FDCPA’s ban on disclosing a debt to a third-party, the FTC compiled nearly 40,000 complaints about “Tells Someone Else About Consumer’s Debt” in 2017.¹¹⁵

¹¹⁰ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt 24 (Jan. 2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf

¹¹¹ *Id.* at 31. *See also* National Association of Consumer Advocates, “An Online Survey Snapshot: Consumer Attorneys Report on How Debt Collectors Treat Their Clients” (Sept. 2019) https://www.consumeradvocates.org/sites/default/files/naca_report_survey_debtcollectionpractices092019.pdf (Survey found that 79% of private attorneys and 74% of legal aid attorneys had consumer clients who received seven or more calls in a week from a debt collector. In the past two years, 34 attorneys have each helped more than 20 consumers who received this volume of collector calls. Based on the low end of the survey data collection range, consumer attorneys collectively have helped at least 1,024 consumers who received seven or more calls a week from debt collectors.).

¹¹² Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt 35 (Jan. 2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf. *See also* National Association of Consumer Advocates, “An Online Survey Snapshot: Consumer Attorneys Report on How Debt Collectors Treat Their Clients” (Sept. 2019) https://www.consumeradvocates.org/sites/default/files/naca_report_survey_debtcollectionpractices092019.pdf (Survey found that 81% of all responding attorneys have clients who were contacted by a debt collector even after the consumer asked the collector to stop calling. In a two-year period, 36 attorneys each have represented 11 or more consumers who were contacted after they had asked collectors to stop calling. In total, responding attorneys represented more than 816 consumers in the same time-period who had requested debt collectors to stop contacts, but the collectors failed to comply.).

¹¹³ Consumer Fin. Prot. Bureau, Consumer Experiences with Debt Collection: Findings from the CFPB’s Survey of Consumer Views on Debt 46 (Jan. 2017), *available at* https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

¹¹⁴ *See* April Kuehnhoff & Ana Girón Vives, National Consumer Law Center, Consumer Complaints About Debt Collection: Analysis of Unpublished Data from the FTC, at 2-3 (Feb. 2019), *available at* <https://www.nclc.org/issues/analysis-of-unpublished-data-ftc.html> (analyzing hundreds of thousands of debt collection complaints received by FTC in 2017).

¹¹⁵ *Id.*

E. Other Problems

This testimony cannot possibly catalog the long litany of problems posed by the collection of debts. For example, there are numerous problems posed by creditors' and collectors' reporting of debts to consumer reporting agencies and the way that the credit bureaus handle those debts and disputes about them.¹¹⁶ In addition, the world of debts incurred through civil and criminal fees, fines and other costs imposed by or through governments also leads to a number of issues in how those debts are collected and their consequences.¹¹⁷ Finally, while this testimony focuses on debt collectors, original creditors can and do engage in abusive collection practices.¹¹⁸

V. The CFPB's Proposed Debt Collection Regulation

On May 21, 2019, the Bureau published a Notice of Proposed Rulemaking (NPRM) to implement the FDCPA, accepting comments through September 18, 2019.¹¹⁹ The Bureau received more than 12,000 comments on the proposed debt collection rule.¹²⁰

The rule as proposed does far more to protect abusive debt collectors than consumers. While the proposal does have some positive elements, they are far outweighed by the negative ones. The CFPB must strengthen the rule to fulfill the Bureau's obligation to faithfully implement the Fair Debt Collection Practices Act's (FDCPA).

The remainder of this section summarizes some of the concerns with the proposed debt collection rule. Detailed technical comments are available online.¹²¹

¹¹⁶ See, e.g., National Consumer Law Center, Fair Credit Reporting § 6.13.2 (9th ed. 2017), *updated* at www.nclc.org/library ("Problems with Debt Collectors As Furnishers"); National Consumer Law Center et al., Comments to CFPB on its Proposed Debt Collection Rule at 137 & 223 (Sept. 18, 2019), https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.

¹¹⁷ See National Consumer Law Center, What States Can Do: Criminal Justice Debt (Sept. 2019), <https://www.nclc.org/issues/fs-criminal-justice-debt.html>.

¹¹⁸ *Id.* at Appx. B (listing top 50 debt collection complaint recipients and including original creditors)

¹¹⁹ 84 Fed. Reg. 23,274 (May 21, 2019).

¹²⁰ Debt Collection Practices (Regulation F), CFPB-2019-0022, available at: <https://www.regulations.gov/docket?D=CFPB-2019-0022>

¹²¹ Group long comments to the CFPB re: proposed debt collection rule (Sept. 18, 2019), available at: https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf.

A. Telephone calls

The Bureau has proposed to allow collectors to make seven attempted calls to a consumer and to have one actual conversation per week for each debt in collection. The same limit would apply to calls to friends or family members seeking the consumer's location information.

We support the concept of a clear, specific limit on the number of both attempted calls and conversations. But constantly ringing phones, and actual conversations with collectors, can be deeply disturbing, and collectors need clear limits. Hearing the phone ring so often is likely to cause significant stress and harassment. It could also interfere with work, potentially jeopardizing the consumer's ability to pay her debts, and could also disturb business places and employers.

However, in order to provide clear and reasonable limits, the limits must be per consumer, not per debt. Many if not most consumers facing debt collection have more than one debt in collection. People also should not have to listen to the phone ringing from collectors every single day. Thus, the rule should be amended to limit collectors to three attempted calls and one conversation per consumer per week.

We support the right of a consumer to tell a collector to stop calling. However, the CFPB should clarify that consumers can stop calls through an oral request, and that collectors should stop calling any phone number unless the consumer specifies a particular number.

The proposed rule allows collectors to leave "limited-content messages" with a third party who answers the phone. Even without specific information about the debt, people are likely to know that a message urging a consumer to call back "to discuss an account" is from a debt collector. CFPB should not exempt any form of communication, including limited-content messages, from privacy rules.

Especially alarming, the proposal could be read to allow debt collectors to deliberately contact third parties such as employers, neighbors, family or friends to convey a message for the consumer. Collectors should not be allowed to call or leave messages with employers or other third parties to convey a message for the consumer. Limited-content messages, if allowed, should only be left on a private voicemail, email or text belonging to the consumer.

B. Emails, text and social media messages

1. The CFPB should not allow emails, texts or social media messages without the consumer's consent by full compliance with the E-Sign Act.

The Bureau has proposed to allow debt collectors to contact consumers through email, text messages, and private social media direct messages. As long as the collector follows minimal procedures that are unlikely to ensure either that the consumer will actually see a message or that it is private, the rule would allow collectors to send legally required notices electronically without complying with the E-Sign Act (which requires consumer consent and a demonstration that the consumer is able to access the information) and would not be responsible if a message is seen by third parties. Yet the mere fact that the consumer gave an email address or cell phone number to the creditor at some point in the past says nothing about whether it is appropriate for a debt collector to communicate that way.

As a result, it is likely that some consumers will never see the important information detailing the debt and the consumer's right to dispute it. Email addresses and phone numbers often change. Many low-income people do not have a computer or sufficient data access, and may only be able to access email, if at all, sporadically at libraries or work. The millions of low-income consumers with Lifeline, pay-as-you-go or limited data cell phones are often not able to receive emails or access the internet, or may incur costs for texts and emails. Emails with the word "debt" may be sent to spam or consumers may automatically delete messages coming from an unknown party. Some older consumers who have cell phones may not be able to access texts, or they may have forgotten how to access texts or email. People simply may not regularly monitor email and may prefer to receive information by mail. Even those who can access emails and texts through smartphones may have trouble reviewing legal notices on small screens or printing and saving them to review later, making it more difficult for consumers to understand the notices or to seek help in dealing with them.

Collectors also should not be exempt from privacy rules when they send emails, texts or direct messages without the consumer's consent. We support the proposed ban on communications on public social media platforms, but far more is needed to protect consumer privacy. Mobile phones or email may be shared among family members, including children who can see text and social media messages. Phone numbers can be reassigned. Collectors may be using work email addresses that are not private, even if the collector claims not to know that it is a work email.

Collectors may have the wrong person and may send an email, text or social media message to a third party.

All of these problems would be avoided by requiring collectors to get the consumer's consent and comply with the E-Sign Act before sending electronic communications.

2. Collectors should not be allowed to convey legally required information through hyperlinks, which risks consumers not receiving information or subjecting themselves to viruses and identity theft.

The proposal contains an especially alarming proposal to allow debt collectors to send validation notices through hyperlinks. Many consumers will not recognize the debt collector and will be reluctant to click on a hyperlink that could expose the consumer to a virus, malware or spyware. As the CFPB itself notes, “federal agencies have advised consumers against clicking on hyperlinks provided by unfamiliar senders,” and “consumer email services can be configured to block hyperlinks from unrecognized senders.” The minimal procedures proposed to give consumers notice and opportunity to opt out of hyperlinks do not give any reasonable assurance that the email will not be sent to spam or that the consumer will recognize an email or text from a debt collector or be comfortable clicking on a hyperlink.

Requiring the validation notice to be accessed through a secure website – while intended to protect the consumer's privacy –will also make it less likely that a consumer will see the notice, especially if they are required to provide personal information to access the site. People will fear that the hyperlink is a phishing email. If the collector does not require additional steps, the consumer's private information could potentially be viewable by the public.

Allowing debt collectors to send unsolicited texts or emails with hyperlinks will also put everyone at greater risk of viruses and identity theft. It will complicate or be inconsistent with warnings from government, employers and advocates that people should never click on a hyperlink from an unknown party. Scammers and criminals are likely to impersonate debt collectors and use collection messages to spread viruses and to induce consumers into turning over personal information. Business computers could also be exposed if consumers – especially those who do not have computers at home – access supposed debt collection emails at work. **Debt collectors should not provide legally required written information through hyperlinks without the consumer's consent.**

3. Consumers should be able to opt out of emails, texts and direct messages through any convenient channel.

To the extent that consumers do receive emails, texts or direct messages from collector, we support the proposed right to opt out of those messages. However, some collectors could make opting out difficult. **Collectors should be required to accept an opt-out sent through any reasonable method – such as by replying “stop” to an email, text or direct message, or orally by phone.** Collectors should be required to describe the opt-out right **in clear, conspicuous and simple language** accessible to the least sophisticated consumer. The CFPB should provide model opt-out language.

4. The CFPB should monitor and consider limits on texts, emails and direct messages.

The proposal does not impose any specific limits on the number of texts, emails, or direct messages. **The CFPB should carefully monitor and require reporting on collectors’ use of emails, texts and direct messages and should consider specific limits if collectors abuse these media.**

C. The proposed rule protects false, deceptive, or misleading practices by collection attorneys.

Some collection attorneys file thousands of collection lawsuits a year without adequate review. Debts are often sold and resold without accompanying records. As a result, lawsuits may be filed against the wrong person, for the wrong amount, or by an entity without legal authority to collect that debt.

The FDCPA prohibits false, deceptive or misleading representations by debt collection attorneys. Yet the proposed rule gives collection attorney a “safe harbor” from liability as long as the attorney reviews unspecified “information” and somehow “determines” that the claims in the lawsuit are correct. This weak to nonexistent standard is not strong enough to protect consumers. Filing a lawsuit against a consumer is a serious business. Many lawsuits will result in judgments, often default judgments, and credit report damage even if the collector has the wrong person or wrong amount. Consumers who are forced to fight these lawsuits will incur the burden, stress, and expense of doing so, and even the potential risk to their job of taking time off work.

The CFPB should require collection attorneys to **review original account-level documentation** of alleged indebtedness and make independent determinations that they are filing a lawsuit against the **right person, for the right amount, based on accurate information about the age of the debt, and that their client has the legal authority to file the lawsuit.**

D. The proposed rule could encourage abusive collection of time-barred zombie debt.

The proposed rule prohibits collectors from filing or threatening a lawsuit if the collector “knows or should know” that the legal time limit to sue has expired, instead of holding the collector responsible for knowing the time limit, as courts have done. The vast majority of debt collection lawsuits end up with default judgments, and consumers who show up in court frequently lack attorneys. Collectors should not be allowed to file or threaten lawsuits knowing that very few consumers will object and the few that do may have difficulty showing the collector knew or should have known that the debt was time-barred. **No collector should be allowed to threaten or file a lawsuit unless they have determined that the debt is still within the legal statute of limitations.**

Even out of court, collecting older debts pose too high a risk of mistake, deception and abuse. Consumers, especially older consumers, may pay even if they do not recognize a debt simply out of fear or to stop harassment. Collectors may also try to trick people into making a small payment that, in many states, will revive the debt and re-start the statute of limitations. **The CFPB should prohibit out-of-court collection of time-barred debt, which is too old to collect without mistakes or deception. At a bare minimum, the Bureau should restore its earlier outline proposal that would have prohibited lawsuits on “revived” debt.**

E. The CFPB must improve the proposed model validation notice.

We support the concept of a model validation notice. A clear, understandable consumer-tested notice will support the requirement of the FDCPA that consumers be given information about the debt and their rights. However, several aspects of the proposed notice fall short.

First, collectors should not be allowed to provide the notice orally. Consumers are unlikely to be able to accurately remember all of the information that they are provided in a stressful call. Second, the notice should make clear that the consumer may dispute the debt “at any time,” not by a specified date. Third, the validation notice should include a statement of rights, as the Bureau

proposed earlier, not just a link to the CFPB website. Fourth, the CFPB should restore the prior proposal to develop a model validation notice in Spanish and other languages and to require collectors to provide notice in the language of the original transaction if the Bureau has a validation notice in that language.

F. We support but urge the Bureau to strengthen proposals regarding parking debts on credit reports and sale of debt.

We support the proposal that prohibits collectors from “parking” debts on credit reports – reporting debts to credit bureaus without first informing a consumer that they are attempting to collect the debt. However, collectors should be required to provide notice about the debt by mail before credit reporting unless the consumer has opted in to electronic communications.

We also support the proposal to prohibit collectors from selling accounts that were paid, discharged in bankruptcy, or where an identity theft report was filed. These debts are either not owed or are highly likely to be fraudulent, and the collectors who are willing to buy these types of debts are likely to engage in unscrupulous and unlawful efforts to collect. The Bureau should also prohibit the sale of time-barred debts and disputed debts for the same reasons.

* * *

Overall, this proposal does far more to protect abusive collectors and to encourage harassing and abusive collection practices than it does to protect consumers. We urge the Bureau to go back to the drawing board, reject the proposal rule, and start over again.

VI. Proposed Legislation

More than 40 years after the passage of the FDCPA, consumers continue to suffer from abusive debt collection practices. Congress has the power to change this by amending the FDCPA to better protect consumers. We briefly discuss the bills that are up for discussion in this session, highlighting the reasons that reforms are needed and what we believe each bill would accomplish. Going forward, we welcome the chance to continue to engage with members on this committee to shape these bills or draft comprehensive FDCPA reform legislation.

A. H.R. 3490: Small Business Lending Fairness Act

This bill addresses one of the serious problems created by the failure of consumer protection laws to cover credit extended to small businesses. As highlighted by a 2018 article by Bloomberg

News,¹²² high cost lenders offer revolving credit loans to struggling small businesses throughout the U.S, often with a treacherous provision hidden in the fine print of the loan documents. If the small business fails to pay the loan back on time, the lender can trigger a “confession of judgment,” allowing the lender to seize all of the business’s assets, including emptying out bank accounts. The confession of judgment allows the creditor to act as if it has a fully enforceable judgment without ever having to go into court. The borrower—the small business—has no opportunity to defend itself, to show that payment has been made, or even to reach some settlement.

These transactions, often characterized as merchant cash advances, attempt to avoid state usury limits—even in those states which have caps applicable to non-consumer credit—by describing the loans as a purchase of the proceeds of the merchants’ future sales, rather than straight loans. The creditor gives the merchant money now in return for the merchant providing the proceeds of the sales in the future. The problem is that the merchant must turn over to the creditor a lot more money in sale proceeds than the creditor provided to the merchant. If analyzed through the lens of a credit transaction, the effective interest rates in these transactions are in the high triple digits.¹²³ Some courts have bought the subterfuges and allowed these transactions to stand, even though state law would have prohibited the transactions if they were seen as what they were: actual extensions of credit.¹²⁴

Confessions of judgments in consumer transactions have been illegal in the United States for decades, as the FTC prohibited them in 1985.¹²⁵ However, there is no federal law outlawing these draconian creditor-self-help provisions for small business transactions. HR 3490 would address this situation and make the prohibition against confessions of judgments applicable to everyone, including small businesses.

¹²² Zachary R. Mider and Zeke Faux, Bloomberg News, *How an obscure legal document turned New York’s court system into a debt-collection machine that’s chewing up small businesses across America*, November 20, 2018. Available at <https://www.bloomberg.com/graphics/2018-confessions-of-judgment/>.

¹²³ *Id.* One example included a loan for over \$36,000 with an APR of 350%.

¹²⁴ See e.g. *K9 Bytes, Inc. v. Arch Capital Funding, L.L.C.*, 57 N.Y.S.3d 625, 632 (N.Y. Sup. Ct. 2017) (emphasis in original). See also *Giventer v. Arnow*, 333 N.E.2d 366, 369 (N.Y. Ct. App. 1975) (“when the terms of the agreement are in issue, and the evidence is conflicting, the lender is entitled to a presumption that he did not make a loan at a usurious rate”).

¹²⁵ 16 C.F.R. pt. 444 (effective Mar. 1, 1985).

B. H.R. 3948: Debt Collection Practices Harmonization Act

Definition of Debt

H.R. 3948 would state expand the definition of debt covered under the FDCPA to includes money “owed to a State.” This expansion is important because many courts have interpreted the definition of debt narrowly in a way that too often excludes government debts. That narrow construction has led many courts to conclude that protections against abusive and unfair debt collection practices do not apply when third-party collectors collect debts allegedly owed to state and local governments, such as municipal utility bills,¹²⁶ tolls,¹²⁷ traffic tickets,¹²⁸ and court debts.¹²⁹ The urgency of protecting against abusive practices in third-party collection of these debts is growing as private debt collectors are increasingly collecting accounts owed to government. According to a 2017 report commissioned by an organization representing debt collectors, government debt (not including federal student loans) was the third largest category of debt collected in 2016 (following medical debt and student loan debt), accounting for 16.4% of the total debt collected by third-party debt collectors,¹³⁰ up from only 2.1% in a 2012 report.¹³¹

Individuals with government debts need and deserve protection from unfair collection practices by these third-party collection companies. Debtors and alleged debtors experience the

¹²⁶ *Boyd v. J.E. Robert Co.*, 765 F.3d 123 (2d Cir. 2014) (mandatory municipal water and sewer charges were not debts under FDCPA because they were levied by city as an incident to property ownership), compare with *Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 400 (3d Cir. 2000) (municipal water and sewer charges were debts within meaning of FDCPA because debts arose from transaction of consumers requesting water and sewer services from city).

¹²⁷ See, e.g., *Yazo v. Law Enf't Sys., Inc.*, No. CV0803512DDP (AGRX), 2008 WL 4852965, at *3 (C.D. Cal. Nov. 7, 2008).

¹²⁸ See, e.g., *Herrera v. AllianceOne Receivable Mgmt., Inc.*, 2015 WL 3796123 (S.D. Cal. June 18, 2015) (traffic fines); *Gibson v. Prof'l Account Mgmt.*, 2011 WL 6019958 (E.D. Mich. Dec. 1, 2011) (parking ticket).

¹²⁹ *Harper v. Collection Bureau, Inc.*, 2007 WL 4287293 (W.D. Wash. Dec. 4, 2007) (court debt); *Gulley v. Markoff & Krasny*, 664 F.3d 1073 (7th Cir. 2011) (municipal fines); *Worley v. Mun. Collections of Am., Inc.*, 2015 WL 890878 (N.D. Ill. Feb. 27, 2015) (municipal fines).

¹³⁰ Ernst & Young, *The Impact of Third-Party Debt Collection on the US National and State Economies in 2016*, at 7 (Nov. 2017), available at: <https://www.acainternational.org/assets/ernst-young/ey-2017-aca-state-of-the-industry-report-final-5.pdf?viawrapper> (report commissioned by ACA International).

¹³¹ Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, at 8 (Feb. 2012), available at: <http://www.creditandcollectionnews.com/uploads/The%20Impact%20of%203rd%20Party%20Debt%20Collection%20on%20the%20National%20and%20State%20Economies.pdf> (report commissioned by ACA International).

same types of unfair and abusive debt collection practices proscribed by the FDCPA in attempts to collect state and local government debt, including traffic and court debt, as they experience in attempts to collect other types of consumer debts. Indeed, the CFPB's consumer complaint database is rife with complaints about abusive practices by private companies collecting on debt allegedly owed to the government.

Further, collection by, or on behalf of, the government is already unusually coercive as a result of the government's police power. This coerciveness makes the need for robust protections against abusive and unfair debt collection practices all the more important. Indeed, the coercive power of the government is the reason so many scammers and debt collectors falsely represent that they are working for or with the backing of the government.¹³²

Finally, clarifying the definition of transaction and debt to encompass government-imposed financial obligations would create clarity and consistency in debt collection standards, ensure that the rules apply evenly across private collection of all types of personal debt, and ensure that ethical collectors are not at a competitive disadvantage in collecting government-imposed debt.

Remedies

This bill would also increase the maximum amounts that can be awarded in statutory damages for a violation of the FDCPA, which are currently capped at \$1,000 for an individual or \$500,000 for a class action, by accounting for inflation since the Act's passage and indexing the amounts going forward so that they will adjust annually to reflect the amount of inflation. These amounts have never been adjusted for inflation. Unfortunately, as time passes the relative value of the penalty has declined and so has its deterrent effect on abusive practices by debt collectors. Congress needs to adjust the amount of the penalty to ensure it is sufficient to prevent debt collectors from engaging in abusive practices instead of just a slap on the wrist that debt collectors consider a cost of doing business.

¹³² See, e.g., Press Release, Consumer Fin. Prot. Bureau, CFPB and the New York Attorney General Settle with Debt Collection Group (July 25, 2019) (announcing proposed \$66 million settlements and injunction banning from the industry debt collectors Douglas MacKinnon, Northern Resolution Group, LLC, Enhanced Acquisitions, LLC, Delray Capital, LLC, and Mark Gray), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-settle-debt-collection-group/>; see also Press Release, Federal Trade Commission, Imposter Scams Top Complaints Made to FTC in 2018 (Feb. 28, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/02/imposter-scams-top-complaints-made-ftc-2018>.

H.R. 3948 would also amend the FDCPA to clarify that courts can award injunctive relief and other “appropriate relief” in addition to monetary sanctions. Although the FDCPA is silent regarding the availability of non-monetary relief, many courts have found that declaratory and injunctive relief are not available. These types of non-monetary remedies are important to protect consumers.

C. H.R. 4403: Stop Debt Collection Abuse Act of 2019

This bill would clarify coverage for debt buyers after the Supreme Court's decision in *Henson v. Santander Consumer USA, Inc.* and clarify coverage for certain debts owed to the federal government that are being collected by private debt collectors.

Henson Fixes

In *Henson v. Santander Consumer USA Inc.*, ___ U.S. ___, 2017 WL 2507342 (June 12, 2017), the Supreme Court held that Santander was not a debt collector under the FDCPA's second definition of debt collector. This narrow opinion held that a debt buyer¹³³ is not subject to the FDCPA as an entity regularly collecting debts “owed or due another,” leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the “principal purpose” of its business is the collection of debts.

This bill would amend the FDCPA in multiple ways in response to *Henson*. First, it would amend the definition of creditor under the FDCPA to exclude debt buyers. Second it would amend the definition of debt collector to clarify that debt buyers are debt collectors covered under the Act. Debt buyers purchase accounts with a face value of billions of dollars every year¹³⁴ and significant concerns exist about some of the common collection practices engaged in by debt buyers, which may result in collection of the wrong amount from the wrong consumer or even by a party that does not have the right to collect that account.¹³⁵

¹³³ Debt buyers are companies that purchase debts from original creditors, intermediaries, or other debt buyers. Debts are purchased for pennies on the dollar. The debt buyer may either try to collect the debts themselves, place them for collection with debt collectors, or sell the debts to other debt buyers. For more background information about debt buyers, see National Consumer Law Center, Fair Debt Collection § 1.3.4 (9th ed. 2018), *updated at* www.nclc.org/library.

¹³⁴ See *id.* at § 1.3.4.2.

¹³⁵ For more about collection practices by debt buyers, see *id.* at § 1.4.7.

Debts owed to the Federal Government

This bill would amend the definition of debt in the FDCPA to specifically include debts “owed to a Federal agency” that are at least 180 days past due. Thus, federal tax debts,¹³⁶ federal student loans,¹³⁷ federal criminal justice debts, and overpayment of benefits would all be covered under the Act as long as they were being collected by a debt collector as defined by the Act¹³⁸ and are at least 180 days past due. The bill would also amend the definition of debt collector to clarify that the term applies to “any person . . . who regularly collects debts currently or originally owed or alleged owed to a Federal agency.” Specifying that the FDCPA applies to debt collectors collecting on federal government debts is important because collection by, or on behalf of, the government is already unusually coercive as a result of the government’s police power and other means of seizing citizen’s assets.

The bill would prohibit debt collectors from selling or transferring a debt originally owed to a federal agency for the first 90 days after default or delinquency and would require at least three notices by the agency to be made to the consumer before selling or transferring the debt. Requirements to provide notice when a debt is sold are transferred are important consumer protections that make it more likely that the consumer will recognize the debt collector when it calls and also prevent fraud by scammers who call people claiming that they owe a debt.

The bill would also only allow debt collectors to add interest, fees, and other amounts to a debt originally owed to a federal agency if the amount is reasonable, authorized by contract between the federal agency and the debt collector, and not greater than 10 percent of the amount collected. Such a provision is aimed at curbing exorbitant debt collection fees, which would be passed along to consumers.

This bill would also require the Comptroller General to study the use of debt collectors by state and local government agencies. As noted in the discussion of H.R. 3948, there appears to be growing use of third-party debt collectors by different government entities. The proposed study represents an opportunity to learn more about these practices.

¹³⁶ See also 26 U.S.C. § 6306(g) (“The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.”)

¹³⁷ For more about the current application of the FDCPA to student loan collection activity, see National Consumer Law Center, Student Loan Law § 8.4.3 (5th ed. 2015), updated at www.nclc.org/library.

¹³⁸ For example, the definition of debt collector would not include government agencies collecting their own debts.

D. Discussion Draft: Monitoring and Curbing Abusive Debt Collection Practices Act

This bill would require the CFPB to make quarterly reports to Congress about debt collection that include details about consumer complaints and a list of enforcement actions. Such a provision would increase the frequency of reports that the CFPB is already required to provide annually and would provide additional details about what must be included.

It would also prohibit the Director of the CFPB from issuing “any rule with respect to debt collection that allows a debt collector to send unlimited email and text messages to a consumer.” Such a provision would prohibit certain rulemaking conduct, in addition to the rulemaking authority described in 15 U.S.C. § 1692l(d). Clarification of the scope of the CFPB’s rulemaking authority will shape the content of any final regulations that the CFPB issues.

E. Discussion Draft: Non-Judicial Foreclosure Debt Collection Clarification Act

On March 20, 2019, the Supreme Court’s unanimous decision in *Obduskey v. McCarthy & Holthus L.L.P.* examined liability for violations of the Fair Debt Collection Practices Act (FDCPA) that are committed in non-judicial foreclosures. *Obduskey* holds that entities whose principal purpose is enforcing security interests are subject only to § 1692f(6), not other FDCPA provisions, when they conduct non-judicial foreclosures in a manner required by state law. This bill would amend the definition of debt collector to clarify coverage for security interest enforcers in light of *Obduskey*, which is important to protect consumers from abusive practices by debt collectors collecting mortgages and other secured debts.

F. Other Legislation

The Committee is considering discussion drafts of other bills that I do not have the time to discuss in this testimony. Other problems discussed in my testimony can also be addressed by Congress or by the CFPB. I look forward to working with Congress to protect consumers against a full range of problems posed by debt collection and to ensure that the CFPB fulfills its mission to protect consumers.

VII. Conclusion

Thank you for the close attention you are paying to abusive debt collection practices and for the bills you are considering today to protect consumers and small business owners. I appreciate the opportunity to provide this testimony and look forward to your questions.